



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252**

**RIN 0750-AH49**

**Defense Federal Acquisition Regulation Supplement;**

**Definition of Cost or Pricing Data (DFARS Case 2011-D040)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing the definition of cost or pricing data. The DFARS changes are necessary to ensure consistency with the Federal Acquisition Regulation (FAR).

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]**, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2011-D040, using any of the following methods:

Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by

Inserting "DFARS Case 2011-D040" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2011-D040." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2011-D040" on your attached document. Follow the instructions for submitting comments.

E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2011-D040 in the subject line of the message.

Fax: 703-602-0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov) approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Gomersall,  
703-602-0302.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rule proposes to update the DFARS for consistency with FAR changes addressing the definition of cost or pricing data,

published at 75 FR 53135 on August 30, 2010.

## **II. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## **III. Regulatory Flexibility Act**

This rule proposes to update the Defense Federal Acquisition Regulation Supplement (DFARS) for consistency with Federal Acquisition Regulation (FAR) changes addressing the definition of cost or pricing data, published at 75 FR 53135 on August 30, 2010. DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely aligns the DFARS with the FAR. However, an initial regulatory flexibility analysis has been performed consistent with 5 U.S.C. 603. A copy

of the analysis may be obtained from the point of contact specified herein.

The rule does not expand or diminish the existing rights of the contracting officer to obtain cost data or pricing data. Instead, this rule will benefit all entities, both large and small, by clarifying the requirements for the submission of "certified cost or pricing data" and "data other than certified cost or pricing data."

There are no projected reporting or recordkeeping requirements associated with this rule. The rule does not duplicate, overlap, or conflict with any other Federal rules. No known significant alternatives to the rule have been identified.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011-D040) in correspondence.

#### **IV. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35).

**List of Subjects in 48 CFR Parts 204, 215, 217, 219, 225, 239,  
241, 242, 244, and 252**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System*

Therefore, DoD proposes to amend 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 215, 217, 219, 225, 239, 241, 242, 244, and 252 is revised to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 204—ADMINISTRATIVE MATTERS**

**204.805 [Amended]**

2. Section 204.805 is amended in paragraph (5) by removing “subject to cost or pricing data” and adding “subject to certified cost or pricing data” in its place.

**PART 215—CONTRACTING BY NEGOTIATION**

3. Section 215.403 is amended by revising the section heading to read as follows:

**215.403 Obtaining certified cost or pricing data.**

**215.403-1 [Amended]**

4. Section 215.403-1 is amended by—
- a. Revising the section heading to read as set forth below;
  - b. In paragraph (b) and the heading of paragraph (c) removing "cost or pricing data requirements" and adding "certified cost or pricing data requirements" in its place;
  - c. In paragraph (c) (4) (C) and the introductory text of paragraph (c) (4) (D) removing "cost or pricing data" and adding "certified cost or pricing data" in its place;
  - d. In paragraph (c) (4) (D) (1) removing "information other than cost or pricing data" and adding "data other than certified cost or pricing data" in its place; and
  - e. In paragraph (c) (4) (D) (2) removing "Cost or pricing data" and adding "Certified cost or pricing data" in its place and removing "cost or pricing data threshold" and adding "certified cost or pricing data threshold" in its place.

The revision reads as follows:

**215.403-1 Prohibition on obtaining certified cost or pricing data**  
**(10 U.S.C. 2306A and 41 U.S.C. 3503.**

\* \* \* \* \*

5. Section 215.403-3 is amended by revising the section heading to read as follows:

**215.403-3 Requiring data other than certified cost or pricing data.**

\* \* \* \* \*

6. Section 215.404-2 is amended by revising the section heading to read as follows:

**215.404-2 Data to support proposal analysis.**

\* \* \* \* \*

**215.404-4 [Amended]**

7. Section 215.404-4 is amended by—

a. In the introductory text of paragraph (b) (1) removing “cost or pricing data” and adding “certified cost or pricing data” in its place;

b. At the end of paragraph (c) (2) (A) removing “.” and adding “; and” in its place;

c. In paragraph (c) (2) (C) (1) (i) removing “cost or pricing data threshold” and adding “certified cost or pricing data threshold” in its place;

d. At the end of paragraph (c) (2) (C) (2) removing “.” and adding “;” in its place; and

e. At the end of paragraph (c) (2) (D) removing “.” and adding “; and” in its place.

**215.407-5-70 [Amended]**

8. Section 215.407-5-70 is amended in paragraphs (b) (2) (i) and (ii) by removing “cost or pricing data” and adding “certified cost or pricing data” in its place.

**215.408 [Amended]**

9. Section 215.408 is amended in paragraphs (1)(i) through (iii) by removing "Cost or Pricing Data" and adding "Certified Cost or Pricing Data" in its place and in paragraph (2) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

#### **PART 217—SPECIAL CONTRACTING METHODS**

##### **217.7406 [Amended]**

10. Section 217.7406 is amended in paragraph (b)(3) by removing "of cost or pricing data" and adding "of certified cost or pricing data" in its place and removing "and cost or pricing data" and adding "and certified cost or pricing data" in its place.

#### **PART 219—SMALL BUSINESS PROGRAMS**

##### **219.806 [Amended]**

11. Section 219.806 is amended in paragraph (1) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place and removing "FAR Subpart 15.4" and adding "FAR subpart 15.4" in its place.

#### **PART 225—FOREIGN ACQUISITION**

##### **225.7303 [Amended]**

12. Section 225.7303 is amended in paragraph (b) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

##### **225.7304 [Amended]**



13. Section 225.7304 is amended in paragraph (c) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place and in paragraph (e)(3) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place and removing "Subpart 201.4" and adding "subpart 201.4" in its place.

#### **PART 239— ACQUISITION OF INFORMATION TECHNOLOGY**

14. Section 239.7406 is amended by revising the section heading to read as set forth below and in paragraph (a) removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**239.7406 Certified cost or pricing data and data other than certified cost or pricing data.**

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#### **PART 241— ACQUISITION OF UTILITY SERVICES**

##### **241.201 [Amended]**

15. Section 241.201 is amended in paragraph (3)(ii) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place and removing "FAR Subpart 15.4" and adding "FAR subpart 15.4" in its place.

#### **PART 242— CONTRACT ADMINISTRATION AND AUDIT SERVICES**

##### **242.7203 [Amended]**

16. Section 242.7203 is amended in paragraph (b) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**242.7302 [Amended]**

17. Section 242.7302 is amended in paragraph (a)(2) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**242.7502 [Amended]**

18. Section 242.7502 is amended in paragraph (g)(3)(ii) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**PART 244—SUBCONTRACTING POLICIES AND PROCEDURES**

**244.305-70 [Amended]**

19. Section 244.305-70 is amended in paragraph (f)(3)(ii) by removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**252.209-7009 [Amended]**

20. Section 252.209-7009 is amended by removing the clause date "(DEC 2010)" and adding "(DATE)" in its place, redesignating paragraphs (a)(1) and (2) as (a)(i) and (ii), and in newly designated paragraph (a)(i) removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**252.215-7000 [Amended]**

21. Section 252.215-7000 is amended by removing the clause date "(DEC 1991)" and adding "(DATE)" in its place and removing "Cost or Pricing Data-Modifications" and adding "Certified Cost or Pricing Data-Modifications" in its place wherever it appears.

**252.215-7002 [Amended]**

22. Section 252.215-7002 is amended by—

a. Removing the clause date "(MAY 2011)" and adding "(DATE)" in its place;

b. In paragraph (c)(1) removing "subcontracts," and adding "subcontracts" in its place and removing "cost or pricing data" and adding "certified cost or pricing data" in its place; and

c. In paragraph (c)(2)(i) removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**252.217-7027 [Amended]**

23. Section 252.217-7027 is amended by removing the clause date "(OCT 1998)" and adding "(DATE)" in its place, in paragraph (a) removing "cost or pricing data" and adding "certified cost or pricing data" in its place, and in paragraph (b) removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

**252.243-7002 [Amended]**

24. Section 252.243-7002 is amended by removing the clause date "(MAR 1998)" and adding "(DATE)" in its place, in paragraph (c)(1) removing "Cost or pricing data" and adding "Certified cost

or pricing data," in its place, and in paragraph (c)(2) removing "Information other than cost or pricing data" and adding "Data other than certified cost or pricing data" in its place and removing "cost or pricing data" and adding "certified cost or pricing data" in its place.

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